

1 A. I'm not allowed to say I assume.

2 MR. HART: Don't assume. He asked
3 if you know.

4 BY MR. LANDON:

5 Q. I'm asking, do you know?

6 A. Do I know how many?

7 Q. Yes.

8 A. No. I do not know how many.

9 Q. When -- when you heard -- well, strike
10 that.

11 Was the first thing that caused your
12 attention to be drawn to the pool enclosure area
13 Alexandra screaming or saying something?

14 A. Yes.

15 Q. And what did you hear her say or did you
16 just hear her scream?

17 A. I heard her scream, "Where's Marissa? Oh,
18 my God, who left the pool door open?"

19 Q. And when you did, you looked up from
20 whatever you were doing at that point?

21 A. Yes.

22 Q. And did you notice --

23 A. It was wide open.

24 Q. -- the door was open?

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1 A. It was wide open.

2 Q. Was it all the way open?

3 A. Yes, it was.

4 Q. What did you do next? What do you recall
5 happening next?

6 A. I -- Rochelle had gone into the pool,
7 grabbed Marissa, put her down on the floor. I
8 called 911.

9 Q. Okay.

10 A. And that's what I recall.

11 Q. Did you call from a phone in the kitchen?

12 A. I have one at the sink, and I have one by
13 the desk. I don't know.

14 I do not remember which phone I
15 used.

16 Q. Was the desk in the kitchen?

17 A. There was also a phone -- I don't remember
18 which phone I used.

19 Q. Was anybody inside the -- strike that.
20 Did you see who actually pulled Marissa out of
21 the pool?

22 A. Did I see it?

23 Q. Yes.

24 A. No. I did not see it.

1 Q. Okay. Did you see anybody go into the
2 pool enclosure area other than Rochelle?

3 A. I heard --

4 Q. Okay.

5 A. I heard somebody jump in the water. I
6 heard the splash, and grabbing, you know, that
7 kind of thing.

8 Q. Do you know whether Vincent Rizzo was in
9 the pool enclosure area when that person jumped
10 in the water and you heard that splash?

11 A. I saw them -- I saw them running out.

12 Q. Saw who running out?

13 A. Vinnie and his partner or his helper.

14 Q. Out of the pool enclosure area?

15 A. Yeah. They ran out -- out through the --
16 the slider of the -- of the den dining room.

17 Q. Okay. And so they came out of the pool
18 enclosure area into the den dining area?

19 A. It's like -- it's like -- it's not -- you
20 know, going just like that.

21 Q. I understand. But where did they go,
22 then?

23 Did they stay inside the house?

24 A. No, they were outside. I don't know where

1 they went to, so...

2 Q. Okay. The door, the slider door in your
3 master bedroom, I take it that was locked and
4 bolted that entire morning?

5 A. Right.

6 Q. Nobody, to your knowledge, went in or out
7 of that door all morning?

8 A. No.

9 Q. Could you see that door from where you
10 were working in the kitchen?

11 A. Could I see my bedroom door?

12 Q. Yeah.

13 A. No, not really. No.

14 Q. Okay.

15 A. I don't even remember. I don't know if I
16 can.

17 I'm trying to -- I believe I would
18 see it open. I'm not sure.

19 I believe -- I can't -- I'll have to
20 go home and look.

21 Q. All right.

22 A. But that's always kept closed and locked,
23 so I -- I don't even think about it. I mean,
24 I've always had it that way.

1 Q. You don't even use it; is that what you
2 are saying?

3 A. Very, very rarely use it. Very, very
4 rarely.

5 Q. Mr. Rizzo and his helper were there that
6 day to work on the patio; is that right?

7 A. Yes.

8 Q. And would it be fair to say that you
9 basically asked Mr. Rizzo to bring that table in
10 to do you a favor, that wasn't -- in other words,
11 that wasn't a task that you were paying him or
12 that anyone was paying him to do that day?

13 A. Correct. That's correct.

14 MR. VAN NAARDEN: Objection to the
15 form.

16 BY MR. LANDON:

17 Q. And his work that he was doing that day in
18 no way involved doing anything at all with
19 respect to the inside of the house or the inside
20 of the pool enclosure, did it?

21 MR. VAN NAARDEN: Objection.

22 THE WITNESS: Do I answer that?

23 MR. LANDON: Yes.

24 MR. VAN NAARDEN: I can't instruct

1 you not to answer.

2 THE WITNESS: Rephrase the question.

3 BY MR. LANDON:

4 Q. Okay. Would it be fair to say that the
5 work that he was being employed, by whoever it
6 was that was employing him --

7 A. Right.

8 Q. -- to work there that day, did not include
9 doing anything inside the house or inside the
10 pool enclosure area?

11 MR. VAN NAARDEN: Objection.

12 THE WITNESS: That is correct.

13 BY MR. LANDON:

14 Q. Okay. And had either you, or your
15 husband, or any other adult member of the
16 household given Mr. Rizzo any instructions during
17 the entire time that he was working there at the
18 property with respect to opening or closing that
19 interior door that separated the dining area from
20 the pool area?

21 A. I have to answer yes or no to that; right?

22 Q. Or I don't know.

23 MR. HART: Actually, to the extent
24 you can. You may not know what your husband

1 might have told him or anyone else. He's just
2 asking what you --

3 BY MR. LANDON:

4 Q. Let's limit it to you for now. Did you
5 give Mr. Rizzo any instructions at any time while
6 he was working at your property about the
7 interior door between the dining area and the
8 pool area?

9 A. I might have, because I always closed the
10 door. And I always tell everybody to close the
11 door, so I might have.

12 Q. Okay. But do you remember actually doing
13 that?

14 A. It's more than likely that I have told him
15 in the past. I -- I don't recollect.

16 Q. Okay.

17 A. Because that's what I do. I close the
18 door.

19 Q. I understand. Were the three older
20 children all swimmers?

21 A. Yes.

22 Q. Okay. I take it Marissa was not a swimmer
23 yet?

24 A. Not yet.

1 Q. Not yet.

2 Nevertheless --

3 A. Unfortunately.

4 Q. -- her mother or other adults would take
5 her into the pool so that she could enjoy it?

6 A. Nobody ever goes to the pool alone.

7 Q. But had Marissa been in the pool with
8 adults?

9 A. Yes.

10 Q. Okay. There are, what, two steps from the
11 dining area down into the pool enclosure area?

12 A. I believe so.

13 Q. Okay. Was Marissa, was she able to walk
14 up and down steps, or did she have to sort of
15 crawl on her hands and knees at that age?

16 A. It's such a long time ago. She just
17 started to -- I believe she was able to go down
18 steps.

19 Q. Do you recall at what age she learned to
20 walk, by any chance?

21 A. I don't recall the age. I know maybe it
22 was the first year checkup, or -- I think -- I
23 really don't recall.

24 But I know I was there when she took

1 her first steps.

2 Q. So she had been walking for a number of
3 months before?

4 A. Yes, she would.

5 Q. I take it you don't have any idea how long
6 Marissa was actually in the pool before she was
7 discovered, do you?

8 A. No, I do not.

9 Q. I take it you don't know why that door was
10 open or who left it open, do you?

11 A. Pardon?

12 Q. I take it you don't know why that door was
13 open or who left it open?

14 MR. HART: There are two separate
15 questions. Why don't we break them down.

16 BY MR. LANDON:

17 Q. Do you know why that door was open?

18 A. Do I know why it was open?

19 Q. Yes.

20 A. I can't assume.

21 Q. Right. I just want to know whether you
22 know.

23 A. I don't know.

24 Q. Okay. Do you know who the person was that

1 opened it?

2 A. Do I know who the person was?

3 Q. Yes.

4 A. I'm going to say I don't know.

5 Q. In your written statement that was Exhibit
6 1, and I'll show it to you if you'd like, but on
7 Page 4 where you're talking about Mr. Rizzo and
8 the table, the statement says, "Originally Vinnie
9 agreed to help get a table from the outside to
10 bring it in through the dining room door and into
11 the pool enclosure for me. I observed him do
12 this. And after he was done, I went over to the
13 dining room sliders where he accessed the pool
14 enclosure and locked them again."

15 Do you understand what I just read
16 to you?

17 A. Yes.

18 Q. Now, that's a little bit different than
19 what you remember here today, isn't it?

20 A. Right.

21 Q. Okay. But nevertheless, even having had
22 that read to you and having reviewed that before
23 coming in here today, your best recollection is
24 the testimony that you've given here today, which

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1 is you don't remember seeing him actually take
2 that table in there at all?

3 A. No, I do not.

4 Q. Okay. As far as you know, did Marissa
5 ever regain any sort of consciousness after she
6 was retrieved from the pool?

7 A. I don't know.

8 Q. I apologize if I've already asked you
9 this, but I take it based on your testimony and
10 what you've told us here today that you don't
11 really have any recollection of the length of
12 time that Marissa was -- her whereabouts were
13 unaccounted for?

14 In other words, from the time that
15 the last adult saw her until the time that she
16 was discovered in the pool, you don't know what
17 that length of time was?

18 A. No, I do not.

19 Q. As far as you know, did any other member
20 of the family after that day ever reach any
21 conclusions as to the length of time that passed
22 between the last adult seeing Marissa and Marissa
23 being discovered in the pool?

24 A. I don't know.

1 MR. LANDON: Okay. I think that's
2 all I have.

3 Thank you. There will probably be
4 other questions for you.

5 MR. HART: Do you want to take a
6 short break?

7 THE WITNESS: I would like that.

8 (A brief recess was taken.)

9 BY MR. VAN NAARDEN:

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. My name is Josh Van Naarden, and I'm an
13 attorney with the law firm of Kline & Specter.
14 We represent Marissa's estate.

15 I'm just going to ask you a few
16 questions. At the time of the incident in August
17 of '02, Vincent Rizzo was doing some work on your
18 property; right?

19 A. That is correct.

20 Q. What exactly was he doing?

21 A. He's a tile man, and he was going to lay
22 bricks for my patio.

23 Q. Was he doing any work on any of the tiles
24 in the pool area?

1 A. Not then. I don't even remember if he
2 ever did.

3 I mean, he -- I know we used to have
4 cement. No.

5 Q. Prior to August of 2002, how long had
6 Vinnie been doing work at your property?

7 A. As long as I can remember.

8 Q. As far as the particular work that he was
9 doing on the date of the accident on the patio,
10 do you know how long of a span of a time he had
11 been there prior to the incident?

12 A. You mean that morning?

13 Q. Well, the day that it happened was a
14 Friday; right?

15 A. Yes.

16 Q. Was he there prior during the week working
17 on tile work on the patio?

18 A. It's a big patio. Yeah.

19 He was working for a while, a long
20 time.

21 Q. How long do you think?

22 A. I don't know.

23 Q. You think more than a week?

24 A. I would think so.

1 Q. And was he working every day?

2 A. I don't remember.

3 Q. But you remember seeing him a lot that
4 summer, summer of 2002 on your property?

5 A. I -- I see -- I used to see him off and
6 on, because the front steps, sometimes the tile
7 is broken, and you know, he's the fellow who
8 fixes the tile.

9 Q. The man who was with him on the date of
10 the accident, had you ever seen him before?

11 A. Yes.

12 Q. He had been at your property before?

13 A. Yes.

14 Q. On this particular project with the patio,
15 had he been there with Vinnie doing that
16 particular project?

17 A. Yes.

18 Q. And had he been there doing other projects
19 that you may have had around the house?

20 A. I believe he was working on the front
21 steps, but I'm not sure.

22 Q. On August 30, the morning of August 30th
23 of 2002, can you just tell me and give me a brief
24 description of the condition of your patio at the

1 time?

2 A. That was a new patio. I mean, it's going
3 to be a new patio.

4 So I don't know what you mean by --

5 Q. Was it still under construction?

6 A. It was still under construction, yes.

7 Q. Were there tarps up?

8 A. I don't remember.

9 Q. Do you recall if it was dusty because of
10 the work that they were doing outside?

11 A. Yes.

12 Q. You had mentioned earlier that -- you
13 mentioned a sukkot tent?

14 A. A what?

15 Q. A sukkot tent. A sukkot?

16 A. Oh, sukkot. Yeah, sukkot.

17 Q. Yeah. Where do you believe that, on
18 August 30, 2002, you had the sukkot tent up?

19 A. It's -- I don't have -- I know a sukkot is
20 supposed to come up and go down, but when we
21 built our house almost 30 years ago, I always
22 wanted to have a -- like a permanent sukkot.

23 So I had a grape arbor. The wood
24 was there.

1 as you sit here today, that Vinnie offered to
2 clean the chairs up as well as bring them in?

3 A. Yes.

4 Q. Okay. And, again, the top of Page 5, what
5 was read to you before was, I went over to the
6 dining room sliders where he accessed the pool
7 enclosure and locked them again.

8 That's what's written on the
9 statement; correct?

10 It's the top of Page 5.

11 A. Oh. That's what it says.

12 Q. But today, as you sit here, you don't
13 quite remember going back and locking it;
14 correct?

15 A. No. I don't remember.

16 I more than likely closed it as I
17 always do. But as far as locking them; no, I
18 don't remember.

19 Q. You also said before, I think you said
20 that the door was kind of heavy. The sliding
21 door was kind of heavy.

22 A. Yes.

23 Q. During the time that Marissa was living at
24 the house prior to this accident, had you ever

1 seen her open that door?

2 A. No. As a matter of fact, when the police
3 took the report, they even tried to open that
4 door, and they -- it was very difficult.

5 Q. How about -- and I want to go through some
6 of the other kids who were there on the 30th.

7 I know that you said that Alexandra
8 was there.

9 A. Hmm.

10 Q. She was eight years old at the time,
11 approximately?

12 A. I guess.

13 Q. Do you know if you had ever seen her
14 actually pull that door open?

15 A. Everybody had a tough time pulling that
16 door open, and they weren't allowed to pull the
17 door open.

18 Q. Okay.

19 MR. HART: Listen carefully to the
20 question, which was did you ever see.

21 THE WITNESS: No.

22 BY MR. VAN NAARDEN:

23 Q. Okay. How about Harrison?

24 A. No.

1 Q. And I'm missing one child. Samuel.

2 A. Sam.

3 Q. Ever see him do that?

4 A. (Witness shook her head.)

5 MR. HART: Answer verbally.

6 THE WITNESS: I'm sorry. No.

7 BY MR. VAN NAARDEN:

8 Q. Other than Rochelle's four children, I
9 think you said the niece was there. But she was
10 24; correct?

11 A. Correct.

12 Q. Were there any other children there under
13 the age of 18?

14 A. No.

15 Q. Had you ever had the occasion prior to
16 this happening where one of the children would
17 come to you and say, You know, Grandma, I want to
18 go outside, but I can't get the door open?

19 A. Yes.

20 Q. Okay. You said before that it was
21 Alexandra that had said something to the effect
22 of The door is open; right?

23 A. (Witness nodded her head.)

24 MR. HART: You have to answer

1 verbally.

2 THE WITNESS: Pardon. Oh, I'm
3 sorry.

4 Yes.

5 BY MR. VAN NAARDEN:

6 Q. And when you heard her say that, did you
7 go look at the door?

8 A. It was wide open.

9 Q. That's why. So you looked and you saw
10 that it was open?

11 A. Yes.

12 Q. Did that surprise you?

13 A. Yes.

14 Q. And why did it surprise you?

15 A. Because the door should always be closed.
16 That's why.

17 Q. What was your initial reaction, like the
18 thoughts in your head, if you can remember, when
19 you were -- when you initially saw it open?

20 A. Oh, my God. Vinnie didn't close the door.

21 Q. Do you remember if prior to August 30th of
22 2002 if you recall Vinnie taking that patio table
23 that we're talking about and actually taking it
24 out to the patio?

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1 MR. HART: If you didn't understand
2 the question, let me know.

3 THE WITNESS: You know -- you mean
4 if it had been in the pool before?

5 BY MR. VAN NAARDEN:

6 Q. Right.

7 A. No, I don't remember.

8 Q. Okay. How about the chairs that we were
9 talking about, do you recall if you remember
10 Vinnie and someone else working with him moving
11 those chairs --

12 A. No.

13 Q. -- from some place other than the patio?

14 A. No, I don't remember.

15 Q. Do you remember if Vinnie asked you -- I
16 think you were asked it before, but I just want
17 to make sure.

18 Do you remember if Vinnie or the guy
19 he was with had asked for any cleaning supplies
20 to help clean off the table or the chairs, like
21 some solvent, or a rag, or anything like that?

22 A. I don't remember.

23 Q. Do you remember if while they were working
24 out on the patio if they had that stuff available

1 to them, or if they had brought that type of
2 stuff with them?

3 A. I -- I -- no. I don't believe that they
4 had the stuff with them.

5 I believe if they -- that maybe they
6 went into the house to get them, the cleaning
7 stuff from the laundry room.

8 Q. Where is the laundry room? Is it -- we'll
9 just use this diagram, because I think it's
10 easier.

11 In connection with the patio, where
12 is the laundry room?

13 A. The laundry room is over here somewhere
14 inside the house.

15 Q. Okay.

16 A. They'd have to go inside and come around a
17 little bit.

18 Q. Okay. You're indicating back where the
19 master bedroom is, that part of the house?

20 A. They don't go as far as the master
21 bedroom. It's before the master bedroom going
22 around. It's a hallway.

23 Q. During the time that Vinnie has worked at
24 the house, periodically does he go actually in

1 the house?

2 A. He's been in the house. Yes.

3 Q. Was he involved in building the house?

4 A. I don't know if he was involved in
5 building the house. He may have been involved in
6 part of the -- I don't remember.

7 I know that it's a long time, but
8 he's been working for a long time.

9 Q. So you and your husband were comfortable
10 enough with Vinnie to allow him to be in the
11 interior of your house?

12 A. Correct.

13 Q. And is that something that if he was in
14 the interior of your house, would he normally ask
15 you, like, knock on the door, ring the bell
16 before he came in, or sometimes he would just
17 walk in and do what he needed to do?

18 A. No. He would -- he would -- he would be
19 proper.

20 He would ring the bell and ask me.
21 He's always a proper person.

22 Q. Okay. You were asked a question before
23 about which chairs we are talking about here,
24 which chairs were taken from the patio to the

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1 pool area. And initially I think you said that
2 it was the rod iron chair with the elastic
3 straps.

4 I don't know if you described it
5 exactly that way.

6 A. Okay.

7 Q. But are we on the same page?

8 A. No. I understand.

9 I understand what you're saying.

10 Q. Okay. And when you were first asked these
11 questions about it, that's what you believed to
12 be -- those are the chairs that you believed that
13 were moved; right?

14 A. You know, after you were asking me --
15 after the plastic chair, I really don't remember.
16 I really --

17 Q. Is there some --

18 A. Sure. I don't remember which ones were --

19 Q. But is there something, based on your
20 routine practice or based on where these chairs
21 usually were kept, that would lead you to believe
22 that it was, in fact, these iron chairs?

23 A. I'm not allowed to explain reasoning,
24 so...

1 MR. HART: No. Go ahead. Answer.

2 THE WITNESS: This was a different
3 situation. We were in the midst of construction,
4 so I don't know if those chairs had been in there
5 before and -- I don't know.

6 I just -- or maybe I just had to
7 bring them in now because every -- you know,
8 there was so much construction going on. I can't
9 remember which chairs were where.

10 You know, it just...

11 BY MR. VAN NAARDEN:

12 Q. Okay. I understand.

13 A. Yeah.

14 Q. Prior to the work that Vinnie was doing on
15 the patio, do you know if there was a project
16 that he was doing like right before that on the
17 house?

18 A. It was a pretty big project. So, I mean,
19 the front steps, I would say.

20 Q. Were they storing any of the materials
21 during the time that they were doing construction
22 in that summer of 2002 in the pool area at all?

23 A. I don't know. I don't remember.

24 Q. During that summer, do you recall

1 regularly seeing them in the pool area during the
2 day?

3 A. Inside the pool area?

4 Q. Yes.

5 A. No. I would believe it would be on the
6 outside.

7 Q. Were there any type of plastic or anything
8 over any of the exterior windows?

9 A. Yes. The -- from the patio, the wall --
10 the wall, the glass wall from the patio to the
11 pool was completely --

12 Q. Covered?

13 A. -- blocked off with panels of -- of board
14 because the windows hadn't come in. The glass
15 panels hadn't come in.

16 Q. Okay. And are you talking about the wall
17 that shares the dining room?

18 A. No. I'm talking about this wall here.

19 Q. Oh, okay. You're talking about the --

20 A. The outside wall. This is an outside
21 wall.

22 Q. Got it. It's the wall that the pool house
23 shares with the patio?

24 A. Correct.

1 Q. Okay.

2 A. Correct.

3 No, the inside walls are open. It's
4 all open.

5 That's, you know, glass.

6 Q. Mm-hmm.

7 A. This is what was on the outside of the
8 house.

9 Q. So they were boarded up?

10 A. Correct.

11 Q. If you took -- were they hammered in or
12 was it just a board that you could take off and
13 put back on?

14 A. Oh, I don't know.

15 Q. Okay. And if the board wasn't there,
16 could you have walked right through into the pool
17 house from outside?

18 A. Yeah. But that was -- they were really in
19 there. I mean, that was --

20 Q. I understand.

21 A. That was a solid structure.

22 Q. Do you know if those boards were placed by
23 Vinnie and his crew?

24 A. I don't believe it had to do with Vinnie.

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